

2016 No. 382 (C. 36)

EDUCATION

**The Higher Education Governance (Scotland) Act 2016
(Commencement, Transitory, Transitional and Savings
Provisions) Regulations 2016**

<i>Made</i>	- - - -	<i>22nd November 2016</i>
<i>Laid before the Scottish Parliament</i>		<i>24th November 2016</i>
<i>Coming into force</i>	- -	<i>30th December 2016</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred on them by section 26(2) and (3) of the Higher Education Governance (Scotland) Act 2016(a).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Higher Education Governance (Scotland) Act 2016 (Commencement, Transitory, Transitional and Savings Provisions) Regulations 2016 and come into force on 30th December 2016.

(2) In these Regulations, “the 2016 Act” means the Higher Education Governance (Scotland) Act 2016.

Appointed days

2.—(1) The day appointed for the coming into force of sections 1, 2, 10 to 25 and the schedule of the 2016 Act is 30th December 2016.

(2) The day appointed for the coming into force of sections 3 to 9 of the 2016 Act is 30th June 2017.

Transitory provision: senior lay member of a governing body

3.—(1) Where the conditions in paragraph (2) are met in relation to a vacancy for the position of senior lay member of the governing body of a higher education institution on the day appointed by regulation 2(2), sections 3 to 9 of the 2016 Act (recruitment, appointment and remuneration and conditions of the senior lay member) apply in relation to that vacancy.

(2) The conditions are that—

- (a) the vacancy arose before the day appointed by regulation 2(2); and
- (b) the higher education institution has not yet advertised the vacancy within and outwith the institution.

Transitory saving provision: presiding at meetings of the governing body

4. Section 5 of the Universities (Scotland) Act 1889(a) (presiding at meetings of the governing body) continues to have effect in relation to a higher education institution on and after the day appointed by regulation 2(1) as if that section had not been amended by paragraph 2(2)(c) and (d) of the schedule of the 2016 Act, until the date on which that higher education institution makes its first appointment by virtue of section 8 of the 2016 Act.

Transitional and transitional saving provision: compliance with section 10

5.—(1) Where the condition in paragraph (2) is met in relation to a higher education institution on the day appointed by regulation 2(1), paragraphs (3) and (4) apply to that institution.

(2) The condition is that the higher education institution's governing document has the effect that the higher education institution is not complying with the requirements of section 10 of the 2016 Act (composition of governing body).

(3) Section 10 of the 2016 Act does not apply to the higher education institution until the earlier of—

- (a) 30th December 2020; or
- (b) the first date on which the condition is no longer met.

(4) Instead, section 11 of the Universities (Scotland) Act 1966(b) (university staff ineligible to become rector, or assessor on court except in certain circumstances) continues to have effect in relation to that higher education institution as it had effect immediately before the day appointed by regulation 2(1), despite the amendment of that section by paragraph 3(4) of the schedule of the 2016 Act.

Transitional and transitory saving provision: compliance with section 15

6.—(1) Where the condition in paragraph (2) is met in relation to a higher education institution on the day appointed by regulation 2(1), paragraphs (3) and (4) apply to that institution.

(2) The condition is that the higher education institution's governing document has the effect that the higher education institution is not complying with the requirements of section 15 of the 2016 Act (composition of academic board).

(3) Section 15 of the 2016 Act does not apply to the higher education institution until the earlier of—

- (a) 30th December 2020; or
- (b) the first date on which the condition is no longer met.

(4) Instead, section 5 of the Universities (Scotland) Act 1858(c) (powers of the senatus academicus and principal) and section 7 and paragraph 4 of Part 1 of schedule 2 of the Universities (Scotland) Act 1966 (constitution of senates and powers exercisable by ordinance) continue to have effect in relation to that higher education institution on and after the day appointed by regulation 2(1) as if those provisions had not been amended by paragraphs 1(3)(a), 3(3) and 3(6) of the schedule of the 2016 Act.

S SOMERVILLE

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
22nd November 2016

(a) 1889 c.55. Section 5 was amended by the Statute Law Revision Act 1908 (c.49); section 15(5) of the University of St. Andrews Act 1953 (c.40); section 1(1) and Parts 1 and 2 of schedule 7 of the Universities (Scotland) Act 1966 (c.13); and section 82(1) and paragraph 1 of schedule 10 of the Self-Governing Schools etc. (Scotland) Act 1989 (c.3).

(b) 1966 c.13.

(c) 1858 c.83.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations bring into force for all purposes sections 1, 2, 10 to 25 and the schedule of the Higher Education Governance (Scotland) Act 2016 (asp 15) (“the 2016 Act”) on 30th December 2016. Sections 3 to 9 of the 2016 Act are commenced by these Regulations on 30th June 2017. These Regulations, therefore, fully commence the 2016 Act.

Regulation 3 makes transitory provision to apply sections 3 to 9 of the 2016 Act (recruitment, appointment and remuneration and conditions of the senior lay member) to the recruitment and appointment of a senior lay member where the vacancy in that position arose prior to 30th June 2017 provided that, on that day, the institution has not yet advertised the position within and outwith the institution. Otherwise, sections 3 to 9 of the 2016 Act only apply to a vacancy arising on or after 30th June 2017.

Regulation 4 makes transitory saving provision so that modifications to section 5 of the Universities (Scotland) Act 1889 (c.55) (presiding at meetings of the governing body), made by the schedule to the 2016 Act, which are consequential on section 8 of the 2016 Act, do not apply to a higher education institution until the first senior lay member has been appointed by that institution under section 8 of the 2016 Act. This transitory saving provision is only relevant to the older universities listed in section 16(1) of the Universities (Scotland) Act 1966 (c.13) (“the 1966 Act”), namely the universities of St. Andrews, Glasgow, Aberdeen and Edinburgh.

Regulation 5 makes transitional provision about the application of section 10 of the 2016 Act (composition of governing body) to a higher education institution whose governing document has the effect that the institution is not complying with that section on 30th December 2016. The date of application of section 10 to such an institution will be whichever is the earlier of 30th December 2020 or the first date on which this obstacle to compliance no longer exists. An example of when this obstacle would exist is where the institution’s governing document does not provide for all the categories of governing body member provided for in section 10(1) or provides for fewer than the minimum number of members provided for in section 10(1). This obstacle would, for example, also exist where an institution’s governing document has been updated to reflect the requirements of the 2016 Act but that update is not yet effective because the governing document makes its own transitional provision for a member to continue in office so that the institution does not have to terminate an existing member’s term of office early if it does not wish to do so. However, when any such transitional provision within an institution’s governing document expires, and the governing document otherwise reflects the requirements of section 10 of the 2016 Act, there will be no obstacle to compliance and section 10 will apply to that institution.

Regulation 5(4) also makes transitional provision so that modifications to section 11 of the 1966 Act (university staff ineligible to become rector, or assessor on court except in certain circumstances), made by the schedule to the 2016 Act, which are consequential upon section 10 of the 2016 Act, do not apply to a higher education institution until section 10 itself applies to that institution. As with regulation 4, this transitional provision is only relevant to the older universities listed in section 16(1) of the 1966 Act.

Regulation 6 makes transitional and transitory saving provision about the application of section 15 of the 2016 Act (composition of academic board) to a higher education institution whose governing document has the effect that the institution is not complying with that section on 30th December 2016. The date of application of section 15 to such an institution will be whichever is the earlier of 30th December 2020 or the first date on which this obstacle to compliance no longer exists. The examples of how this transitional provision applies are the same as the examples for the transitional provision in regulation 5.

Regulation 6(4) also makes transitory saving provision so that modifications to section 5 of the Universities (Scotland) Act 1858 (c.83) (powers of the senatus academicus and principal) and section 7 and paragraph 4 of Part 1 of schedule 2 of the 1966 Act (constitution of senates and powers exercisable by ordinance), made by the schedule to the 2016 Act, which are consequential

on section 15 of the 2016 Act, do not apply to a higher education institution until section 15 itself applies to that institution. As with regulations 4 and 5, this transitory saving provision is only relevant to the older universities listed in section 16(1) of the 1966 Act.

The effect of regulations 5 and 6 is to give higher education institutions 4 years from the date of commencement of these Regulations to comply with sections 10 and 15 of the 2016 Act (composition of governing body and academic board). However, a higher education institution may comply earlier than this if it wishes and as soon as such earlier compliance is achieved, the 2016 Act will apply in its entirety to that higher education institution, subject to the commencement of sections 3 to 9 of the 2016 Act on 30th June 2017.

The Bill for the 2016 Act received Royal Assent on 13th April 2016. Section 26(1) of the 2016 Act brought into force sections 26 and 27 on the day after Royal Assent.

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